IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Bail Appl..No. 3977 of 2007()

[CRIME NO.355 OF 2007 OF NEYYATTINKARA POLICE STATION]

PETITIONERS/ACCUSED 1 TO 3

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1. SHIBU, AGED 34, S/O.RAGHU, RAMANVILASOM, PARACHANTHALAVILA VEEDU,PUNNAKADU, PERUMPAZHUMOOR P.O.,NEYYATTINKARA.

2. PREM, AGED 28, S/O.SURENDRAN, PRANAVAM,CONVENT ROAD,PRAVACHAMBALAM,NEMOM.

3. BAIJU STEPHAN, AGED 30, S/O.STEPHEN, B.V.SADHANAM,THOZHUKAL,PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM REPRESENTING SUB INSPEPCTOR OF POLICE, NEYYATTINKARA.

BY PUBLIC PROSECUTOR SRI. N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No. 3977 of 2007

Dated this the 2nd day of July 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 3. They face allegations under Sections 353 and 294(b) read with 34 I.P.C. The crux of the allegations raised against the petitioners is that they, who were proceeding on a motor cycle, assaulted an Assistant Sub Inspector of Police on duty who wanted to restrain the petitioners from proceeding further along a public road in the light of a procession which was to take place. The petitioners allegedly became furious when they were asked not to proceed. One of them allegedly shouted, abusive and obscene words and pushed away the hand of the police officer who tried to restrain them. Thereupon, a crime was registered against these persons showing the number of the motor cycle. Later, the petitioners were ascertained as the accused and necessary report to that effect was given. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. The incident did not take place in the manner alleged by the complainant at all. There was a procession and the traffic was being unjustifiably obstructed by the police. On that aspect, there was a wordy altercation. The present crime has hence been raised by the A.S.I against the petitioners.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the jurisdiction under Section 438 Cr.P.C. There is absolutely no mala fides involved as can be seen by the registration of the F.I.R wherein the number of the motor cycle and not the name of the accused is shown.

4. I find merit in the opposition by the learned Public Prosecutor. I do not find any reason to permit the petitioners to arm themselves with an order of anticipatory bail. I am satisfied that, in the facts and circumstances of this case, to allay the apprehension of physical harm and torture, the petitioners can be given an opportunity to appear before the learned Magistrate

and seek regular bail in the ordinary course. The possibility of their being arrested and detained in police custody before they get an opportunity to approach the learned Magistrate for bail can be so avoided in the peculiar facts and circumstances of this case.

5. In the result, this petition is allowed. The following directions are issued under Section 438 Cr.P.C.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 09/07/2007.

ii) The petitioners may apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case. The learned Magistrate must thereafter, proceed to pass appropriate orders on merits, in accordance with law and on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007